No. 1076 125

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

NATIONAL LABOR RELATIONS BOARD,

~~*Petitioner*~~ *Respondent*,

—against—

THE CENTURY OXFORD MANUFACTURING CORPORATION,

~~*Respondent*~~ *Appellant*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ARCHIBALD PALMER,
Counsel to Respondent-Appellant.

THE COURT PRESS, N. Y. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

NATIONAL LABOR RELATIONS BOARD,

Petitioner-Respondent,

—against—

THE CENTURY OXFORD MANUFACTURING CORPORATION,

Respondent-Appellant.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

To the Honorable the Chief Justice and Associate Justices for the Supreme Court of the United States:

The petition of The Century Oxford Manufacturing Corporation respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF MATTER INVOLVED.

This is a petition for a writ of certiorari by The Century Oxford Manufacturing Corporation to review a decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above cause on March 3, 1944 enforcing the order of the National Labor Relations Board (R. 1004-1006).

Statement of Facts.

The Century Oxford Manufacturing Corporation is engaged in the manufacture, sale and distribution of optical frames and mountings and related products, with a principal place of business in Long Island City, New York, and has one hundred and ten employees.

The Wholesale & Warehouse Workers Union, Local 65, C. I. O., commenced organization activities among the employees sometime in the middle of June, 1941 (R. 367). Thereafter and on November 19, 1941 the said union, by a vote of sixty to nineteen, in a consent election, was certified as the sole bargaining representative under Proceedings 9 (c) of the Act (R. 898). Pursuant to a request to bargain The Century Oxford Manufacturing Corporation's representative met with the union's representatives on December 5, 8, and 16, 1941 (R. 370, 374, 375). At these bargaining conferences The Century Oxford Manufacturing Corporation and the union did not come to terms.

On December 31, 1941 a shop committee of employees was organized for the purpose of withdrawing from the union. A total of seventy-nine of the employees signed a petition stating that they did not want the union to represent them in collective bargaining (Respondent's Exhibit 3, R. 902). This group of employees held at least two meetings and elected a committee to represent it (R. 612).

On January 26, 1942 the employees, numbering seventy-nine, petitioned the Board for an investigation and certification, pursuant to Section 9 (c) of the Act (R. 888). On the 7th day of August, 1942 the Board dismissed the said employees' petition (R. 891).

In advance of the trial and in substantiation of its affirmative defense as alleged, The Century Oxford Manu-

facturing Corporation offered to stipulate a consent election as late as June, 1942 in its desire to effectuate the policy of the Act and to prove to the Board that the union involved no longer represented a majority of the employees (R. 58). This offer was refused.

Hearings were held before the National Labor Relations Board and findings of fact, decision and order were issued by the Board on February 22, 1943, directing that The Century Oxford Manufacturing Corporation and its officers, agents, successors and assigns shall cease and desist from refusing to bargain collectively with the union as exclusive representative of its employees; from dominating and interfering with the formation or administration of the committee representing workers of The Century Oxford Manufacturing Corporation; from contributing support to it or recognizing the said committee as the representative of its employees; and to take affirmative action which the Board found will effectuate the policies of the Act such as, upon request, to bargain collectively with Wholesale and Warehouse Workers Union, Local 65, C. I. O., as the exclusive bargaining representative of the employees of The Century Oxford Manufacturing Corporation; to withdraw all recognition from and completely disestablish the committee representing workers of The Century Oxford Manufacturing Corporation, etc. (R. 1004 to 1006, incl.).

The National Labor Relations Board filed a petition for an order enforcing its cease and desist order against The Century Oxford Manufacturing Corporation with the Circuit Court of Appeals for the Second Circuit. The Circuit Court of Appeals, in a *per curiam* decision, granted the petition for an order enforcing the cease and desist order of the National Labor Relations Board (R. 1021 to 1024, incl.).

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the United States Circuit Court of Appeals for the Second Circuit will result in a denial of due process of law and therefore violates a constitutional right of The Century Oxford Manufacturing Corporation.

2. The decision of the United States Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act to give employees freedom to choose a local organization, whether such choice by the employees be wise or not.

3. The decision of the United States Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act which does not create a minimum time during which their elected representative may act on their behalf.

4. The decision of the United States Circuit Court of Appeals for the Second Circuit is contrary to the decision of *Donnelly Garment Company* v. *National Labor Relations Board*, decided by the United States Circuit Court of Appeals for the Eighth Circuit and reported in 123 Fed. (2d) 215.

5. The decision of the United States Circuit Court of Appeals for the Second Circuit involved the interpretation of a Federal statute which is of paramount importance to business and labor throughout the country.

6. The United States Circuit Court of Appeals has

decided a question of Federal law of vital importance which should be settled by this Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court for the Second Circuit commanding that it certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this case; and that said decree of the United States Circuit Court for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem mete and just, for which your petitioner will ever pray.

Dated, New York, June 1, 1944.

THE CENTURY OXFORD MANUFACTURING CORPORATION,

By: Archibald Palmer,
Counsel for Respondent-Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

NATIONAL LABOR RELATIONS BOARD,
Petitioner-Respondent,

—against—

THE CENTURY OXFORD MANUFACTURING CORPORATION,
Respondent-Appellant.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The decision of the National Labor Relations Board and the opinion of the United States Circuit Court of Appeals for the Second Circuit have not been officially reported.

The opinion of the National Labor Relations Board was rendered on February 22, 1943 and is contained in pages 975 to 1004 of the record.

The opinion of the United States Circuit Court of Appeals for the Second Circuit was handed down on December 15, 1943 and is contained in the record at pages 1021 to 1024.

II.

Jurisdiction.

The jurisdiction of this Court is based upon Judicial Code Section 240 (a) (28 U. S. C. Sec. 347 (a)).

The date of the order for mandate of the United States Circuit Court of Appeals for the Second Circuit to be reviewed is March 3, 1944.

III.

Statement of the Case.

The essential facts of the case are stated in the foregoing petition and in the interests of brevity are not repeated here.

IV.

Specifications of Error.

The United States Circuit Court of Appeals for the Second Circuit erred:

5. In failing to hold that where employees freely choose a labor organization it is not for the National Labor Relations Board to say whether such employees chose wisely or otherwise.

V.

Summary of Argument.

(a) The refusal by the National Labor Relations Board to receive and consider competent and material evidence

in an endeavor to explain how and why the employees came to organize the independent group or commit and disestablish their relationship to the union amounted to a denial of the due process of law clause of the Constitution.

(b) The decision of the Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act, which does not create a minimum time during which the employees' elected representatives may act on their behalf.

1. In failing to hold that the refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by The Century Oxford Manufacturing Corporation amounts to a denial of the due process of law clause of the Constitution.

2. In failing to hold that relaxation relating to admission of evidence before the National Labor Relations Board may be used to free administrative Boards from compulsion of technical rules so that a mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order but in no case limits the well known rules relating to weight, applicability and materiality of evidence.

3. In holding that Congress intended that the freedom to choose a representative carries with it a certain degree of permanence.

4. In holding that the National Labor Relations Board can exercise its discretion as to whether a situation exists which would warrant the exercise of free choice by the employees to discharge its representative and appoint another in its place.

VI.

Argument.

POINT A.

The refusal by the National Labor Relations Board to receive and consider competent and material evidence in an endeavor to explain how and why the employees came to organize the independent group or committee and disestablish their relationship to the union amounted to a denial of the due process of law clause of the Constitution.

The Circuit Court of Appeals in its opinion fails to discuss or mention the contention of The Century Oxford Manufacturing Corporation that the order of the Board was invalid because the Trial Examiner's rulings prevented it from introducing evidence bearing on the main issue involved.

The Century Oxford Manufacturing Corporation attempted to prove that the union lost its majority by neglecting its own charges and that this was not motivated or caused by any unfair labor practices on its part.

The Century Oxford Manufacturing Corporation upon the trial endeavored to prove that a successful strike vote was taken in the second week in December, 1941 and that upon the refusal of the union to sanction such a strike the members withdrew from them and was further prevented from proving that the committee, on December 31, 1941, represented almost all of the members of the union (R. 418 to 421, incl., 425).

Such proof would have shown how and why the employees came to organize the committee.

Such proof was competent and material to the issues before the Board.

Such proof should have been considered by the Board.

The refusal to accept and consider such proof amounted to a denial of the due process of law clause of the Constitution.

The refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by a party to a proceeding before it amounts to a denial of the due process laws of the Constitution. Cases standing for that proposition are:

> *Donnelly Garment Co.* v. *National Relations Labor Board* (C. C. A. 8) 123 Fed. (2d) 224;
>
> *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 73, 56 S. Ct. 720, 80 L. Ed. 1033;
>
> *Ohio Bell Telephone Co.* v. *Public Utilities Commsion*, 301 U. S. 292, 304, 305, 57 S. Ct. 724, 81 L. Ed. 1093;
>
> *Railroad Commission* v. *Pacific Gas & Electric Co.*, 302 U. S. 388, 393, 58 S. Ct. 334, 82 L. Ed. 319;
>
> *Morgan* v. *United States*, 304 U. S. 1, 14, 15, 58 S. Ct. 773, 999, 82 L. Ed. 1129.

That the Board would or might have reached no different conclusion had the rejected evidence been received is entirely beside the point. The fact is that a controversy tried before a Court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered. To that effect see:

> *National Labor Relations Board* v. *Thompson Products, Inc.*, 6 Cir., 97 F. (2d) 13, 15;

Foote Bros. Gear & Mach. Corp. v. *National Labor Relations Board*, 7 Cir., 114 F. (2d) 611, 621.

As appears from the record in the case at bar (R. 991) even the Board recognized the existence of a possible basis for the employees' dissatisfaction of the union and if it had not been for the Examiner's ruling excluding the evidence sought to be introduced by The Century Oxford Manufacturing Corporation the record would have included substantial evidence in support of the defense that the actions of the employees were not influenced by the employer or its agents but rather by lack of cooperation or inertia on the part of the union by which it was represented and dissatisfaction with the said union. The refusal on the part of the Examiner to permit such evidence denied The Century Oxford Manufacturing Corporation of the due process of law guaranteed by the Constitution.

Moreover it was the intent and purpose of Congress, in enacting the provisions of the National Labor Relations Act, that evidence prevailing in Courts of equity and law may be relaxed in connection with the admission of evidence offered in proceedings before the National Labor Relations Board and to free administrative boards from compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order.

> *Consolidated Edison Company of New York* v. *National Labor Relations Board*, 59 Sup. Ct. 206, 305 U. S. 197.

Such relaxation of the technical rules of evidence is followed for the purpose of giving the administrative

board a wider scope in accepting evidence with the view that in arriving at its decision the administrative board would use such evidence as is material and competent in the proceeding. This relaxation, however, was never intended to be used to limit the admission of evidence as was done in the case at bar and such limitation is contrary to the established cases.

National Labor Relations Board v. *Illinois Tool Works*, 119 Fed. (2d) 356.

POINT B.

The decision of the Circuit Court of Appeals for the Second Circuit is contrary to the intent and purpose of the Act, which does not create a minimum time during which an employees' elected representative may act on their behalf.

The Court in its decision states in substance that the Board has the power to hold employees to their choice for a season and, further, that the question of how long the employees' power to recall an elected representative may be suspended is a matter to be finally determined by the Board.

In the case at bar the union was the elected representative for a period of six weeks. The Court as a matter of law held that the employees committed themselves to the union as their representative for a longer period (R. 1023).

The National Labor Relations Act does not prohibit an effective discharge of such representative by reason of dissatisfaction with the activity or inactivity of such representative union nor is there any limitation in said

Act as to the time that such elected representative union must continue as such. Neither does the Act provide that the Board is the final arbiter as to the length of time during which the said elected representative must continue to act.

No one has been prejudiced by the discharge of the union, particularly where the union had made no contracts on behalf of the employees with the employer and has not bound themselves in any way.

The National Labor Relations Act guarantees to employees freedom of choice in the matter of self-organization in collective bargaining uncontrolled or influenced by any expression or form of order from the Labor Relations Board or the Circuit Court of Appeals and a transfer by employees, of their own volition, to another union must be respected both by the employer and the Labor Relations Board. To that effect see:

> *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board* (C. C. A. 8), 104 Fed. (2d) 49;
> *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 59 S. Ct. 490, 83 L. Ed.

In the case of *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board* (cited *supra*) the Court, at page 55, stated as follows:

> "Having in mind that it is the fundamental policy of the Act to permit employees freely to choose their representatives, it follows that the employees have a right to change their choice, and when that fact has been brought sharply to the attention of the Board, as in this case, it was, we think, the duty of the Board to investigate the claim."

In the matter of *National Labor Relations Board* v. *Standard Oil Co.* (C. C. A. 10), 124 Fed. (2d) 895, the Court at pages 902 and 903 stated as follows:

> "The Act guarantees to the employees the right to self-organization, to form or join a labor organization, and to bargain collectively through representatives of their own choosing. This freedom of choice embraces both local and affiliated organizations and where the employees freely choose a local organization, it is not either for the Board or us to say whether they chose wisely or otherwise.
>
> "Standard employees had the right to form the Association and to join the same immediately after the disestablishment of the Plan."

The interpretation given to the Act by the Circuit Court of Appeals for the Second Circuit appears to be contrary to the Act and contrary to the decisions of the Circuit Court of Appeals for other circuits, such as the Eighth and the Tenth Circuits.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Honorable Court of its supervisory powers in order that the constitutional rights of the employer may be protected and that an important question of Federal law may be settled as hereinabove discussed and that to such end a writ of certiorari should be granted and this Court review the decision of the Circuit Court and finally reverse it.

Respectfully submitted,

ARCHIBALD PALMER,
Counsel to Respondent-Appellant.

(13)

No. 125

In the Supreme Court of the United States

OCTOBER TERM, 1944

CENTURY OXFORD MANUFACTURING CORPORATION,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

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No. 125

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v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 1024–1026) is reported in 140 F. (2d) 541. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 975–1006) are reported in 47 N. L. R. B. 835.

JURISDICTION

The decree of the court below (R. 1027–1029) was entered on March 3, 1944. The petition for a writ of certiorari was filed on June 3, 1944. The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

In a secret election conducted by the Board, a union was designated by a majority of petitioner's employees as their representative for collective bargaining. Six weeks later, a petition purporting to repudiate the union as their bargaining representative was circulated among the employees and was signed by a majority of them. The question is whether, under the circumstances of this case, the Board was entitled to hold that petitioner was required to continue to bargain collectively with the union.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 9–10.

STATEMENT

Upon the usual proceedings, the Board, on February 22, 1943, issued its findings of fact, conclusions of law, and order (R. 975–1006). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:[1]

[1] In the following statement, references preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

On October 31, 1941, the Wholesale and Warehouse Workers Union, Local 65, C. I. O., hereinafter called the Union, initiated a proceeding under Section 9 (c) of the Act to determine its authority to represent petitioner's employees for purposes of collective bargaining (R. 892–893).[2] Thereafter petitioner and the Union entered into a stipulation, in which it was agreed that representation of petitioner's employees should be determined by a secret election to be conducted by the Board's Regional Director (R. 990; 894–896), and that petitioner would bargain collectively with the Union if the latter should receive a majority of the votes cast (R. 896). On November 19, 1941, an election was held, and the Union was designated by a vote of sixty to nineteen as the collective bargaining representative of petitioner's employees (R. 990–991; 897–899). The results of the election were certified to the parties by the Board's Regional Director on November 22 (R. 897–899), and negotiations for a collective agreement were accordingly begun (R. 1000; 368–384, 422).

On December 31, while negotiations were still under way, several employees circulated a petition purporting to repudiate the Union as the

[2] The Board found that petitioner had theretofore, in June 1941, violated Section 8 (1) of the Act by interfering with the self-organization of its employees (R. 980–983). This finding is not challenged by the petition.

employees' collective bargaining agent (R. 983; 588, 605, 902). A majority of the employees signed, and the petition was submitted to petitioner's general manager (R. 983; 719–720). Petitioner thereafter refused to continue collective bargaining with the Union on the ground that the Union no longer represented a majority of its employees (R. 991; 882).[3]

Upon the foregoing facts the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act, and entered an order requiring petitioner to cease and desist from its violations of the Act, to bargain collectively with the Union upon request, and to post appropriate notices (R. 1004–1007).[4] On February 15, 1944, upon petition of the Board, the Circuit Court of Appeals for the Second Circuit held, *per curiam*, that the Board's order should be enforced (R. 1024–1026). On March 3, 1944, it entered a decree accordingly (R. 1027–1029).

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[3] Thereafter, on March 3, 1942, petitioner signed a contract with the "Committee", a rival labor organization of its employees, which, the Board found, had been dominated and assisted by petitioner since December 31, in violation of Section 8 (2) of the Act (R. 983-988). The petition raises no issue concerning this finding.

[4] The order contains additional provisions relating to the findings of violations of Section 8 (1) and (2) mentioned in the foregoing footnotes. These provisions are not challenged by the petition.

ARGUMENT

The court below correctly rejected petitioner's contention that its statutory obligation to bargain with the Union terminated abruptly on December 31, 1941, when the petition purporting to repudiate the Union as the representative of a majority of its employees was submitted to petitioner. As this Court recently said in *Franks Bros. Co.* v. *National Labor Relations Board*, No. 521, October Term 1943, decided April 10, 1944, slip opinion, pages 3–4, "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed. * * * After such a reasonable period the Board may, in a proper proceeding and upon a proper showing, take steps in recognition of changed situations which might make appropriate changed bargaining relationships."

The Board has sought to achieve a proper balance between the policy of affording employees full freedom of choice and that of securing stability of representation adequate to attain the statutory goal of industrial peace under collective agreements. With the unanimous approval of the courts (see *National Labor Relations Board* v. *Appalachian Electric Power Company*, 140 F. (2d) 217, 220–222 (C. C. A. 4); *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F.

(2d) 876, 881–882 (C. C. A. 3), certiorari denied, 319 U. S. 751; *Valley Mould & Iron Corporation* v. *National Labor Relations Board,* 116 F. (2d) 760, 764–765 (C. C. A. 7), certiorari denied, 313 U. S. 590; cf. *Franks Bros. Co.* v. *National Labor Relations Board, supra*), it has evolved the rule that an employer must recognize for a reasonable period thereafter a bargaining representative duly designated in a Board election, unless in the meantime, because of the circumstances of the particular case, a contrary designation is made by the Board.[5] "Without such a rule," the Board stated in the present case (R. 993), "collective bargaining would be deprived of stability, and administrative determinations would become ephemeral." Compare *National Labor Relations Board* v. *Whittier Mills Company,* 111 F. (2d) 474, 478 (C. C. A. 5). The court below upheld the Board's authority in these words (R. 1026):

> Unless the Board has power to hold the employees to their choice for a season, it must keep ordering new elections at the whim of any volatile caprice; for an election, conducted under proper safeguards, provides the most reliable means of ascer-

[5] In harmonizing the policies of free choice and stability, the Board has adopted the rule that it will in the normal instance refuse to entertain a petition for a new designation of employee representative within a year after the issuance of a certification. *Matters of Wilson & Co.*, 25 N. L. R. B. 938; *Minneapolis-Moline Power Implement Co.*, 14 N. L. R. B. 920; *Westinghouse Electric & Mfg. Co.*, 38 N. L. R. B. 404, 409.

> taining the deliberate will of the employees. How long the employees' undoubted power to recall an elected representative may be suspended, is a matter primarily, perhaps finally, for the Board; but a period of six weeks is on any theory not the limit.

The Board relied upon an additional ground in holding that the petition presented to the employer on December 31, 1941, did not constitute an effective repudiation by a majority of its employees of the prior designation of the Union as their exclusive bargaining representative. The Union, the Board found, had been elected only six weeks earlier by a large majority of petitioner's employees. "The ballots were cast secretly in an election surrounded by all the safeguards customarily provided to insure complete freedom of choice. Such elections, held under the auspices of the Board, in accordance with express statutory provisions, have been uniformly found to furnish the best evidence of employees' desires concerning representation for collective bargaining. When employees have expressed their considered opinions by a method which leaves no room for doubt as to their true desires, repudiation of their selection can be established only through the medium of an equally probative technique. Clearly this petition, subject to all the infirmatives of a public poll, falls short of this standard" (R. 992).

No additional question is raised by petitioner's challenge of the exclusion of evidence bearing

upon the motives of the employees who sought to repudiate the Union (Pet. 12). If the court below correctly decided that the Board may hold the employees to their choice for a reasonable period, the proffered evidence was clearly immaterial.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.

ALVIN J. ROCKWELL,
General Counsel,
RUTH WEYAND,
JACOB I. KARRO,
Attorneys,
National Labor Relations Board.

JULY 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Sec. 151, et seq.) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).
>
> * * * * *
>
> SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any

time to present grievances to their employer.

* * * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

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